

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RYDEX, LTD.	§	
	§	
Plaintiff,	§	CAUSE NO.: 4:10-cv-267
	§	
v.	§	
	§	
MASTERCARD, INC. and	§	JURY TRIAL DEMANDED
VISA, INC.	§	
	§	
Defendants.	§	

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff files this Complaint for patent infringement against MasterCard, Inc. (“MasterCard”) and Visa, Inc. (“Visa”) and for its cause of action states the following:

THE PARTIES

1. Plaintiff Rydex, Ltd. (“Rydex”) is a company organized under the laws of the State of Iowa. Rydex’s principal place of business is Mitchellville, Iowa.
2. Defendant Mastercard, Inc. is a corporation incorporated under the laws of the State of Delaware. Its principal place of business is New York, New York. Defendant Mastercard may be served with this Complaint through its Chief Executive Officer, Mr. Robert W. Selander, MasterCard, Inc., 2000 Purchase Street, Purchase, New York 10577-2509.
3. Defendant Visa, Inc. is a corporation incorporated under the laws of the State of Delaware. Its principal place of business is San Francisco, California. Defendant Visa may be served with this Complaint through its registered agent, CT Corporation System, 818 W. 7th Street, Los Angeles, California 90017-3407.

JURISDICTION AND VENUE

4. This is an action for violation of the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the patent laws of the United States. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b) in that the Defendants do business in this District, have committed acts of infringement in this District, and continue to commit acts of infringement in this District, entitling Plaintiff to relief.

INFRINGEMENT OF U.S. PATENT NO. 5,204,819

5. On April 20, 2003, United States Letters Patent No. 5,204,819 (the “‘819 patent”) was duly and legally issued to Michael C. Ryan for an invention titled *Fluid Delivery Control Apparatus*. The Patent was the subject of a reexamination proceeding that culminated on November 21, 2006 with the issuance of an *ex parte* reexamination certificate. On or about August 21, 2009, Mr. Ryan assigned all rights, title and interest in and to the ‘819 Patent to Rydex. Rydex remains the sole assignee of the ‘819 Patent. A true and correct copy of the ‘819 Patent is attached as Exhibit A to this Complaint.

6. The ‘819 Patent relates generally to an apparatus for controlling the delivery of a fluid to a container or reservoir and, more specifically, to an apparatus for the exchange of security, identification, and transaction information between a container, such as a fuel or other fluid storage tank, and a fluid delivery system.

7. Rydex, Ltd. is owned and operated by its President and CEO Michael Ryan. Mr. Ryan originally conceived of the invention claimed in the ‘819 Patent to prevent fuel theft in his construction business. Rydex was formed to build, promote, capitalize and apply the unique solutions Mr. Ryan conceived in using RFID in fluid delivery control.

8. MasterCard is a leading global payment solutions company that provides a variety of services in support of the credit, debit and payment related programs of over 24,000 financial institutions and other entities that represent its customers. As part of these services, MasterCard offers certain credit and debit cards that include the PayPass system. The Paypass system allows users to make a purchase by simply tapping the PayPass-enabled card on the “contactless” payment reader of participating retail locations. The PayPass system uses a hidden embedded computer chip and radio frequency antennae to communicate payment information between the card and the reader. As of 2008, there were more than fifty million PayPass-enabled cards and devices in use worldwide. Among the retail locations that use the PayPass system are gas stations and other facilities that dispense fuel for vehicles.

9. MasterCard has infringed and continues to infringe the ‘819 patent by its manufacture, use, sale and/or offer for sale of MasterCard’s PayPass products and services. MasterCard also contributes to and induces others to manufacture, use, sell, import, and/or offer for sale products and services that infringe the ‘819 Patent. MasterCard is liable for its infringement of the ‘819 patent pursuant to 35 U.S.C. § 271.

10. MasterCard has violated and continues to violate 35 U.S.C. § 271 (a), (b), (c), and (f). Specifically, MasterCard has continued to make, use, sell, and offer to sell products that infringe the claims of the ‘819 Patent. MasterCard also continues to contribute to and induce infringement by others, without a license under the Patent.

11. MasterCard’s acts of infringement are irreparably harming and causing damage to Rydex.

12. Visa operates the world’s largest retail electronic payments network and manages a leading global payments brand. Visa has more branded credit and debit cards in circulation,

more transactions and greater total volume than any of its competitors. In support of the services it provides, Visa offers certain credit and debit cards that include the payWave system. The Visa payWave system completes a user's transaction by using the latest radio frequency technology to send encrypted account information to readers that are configured to accept Visa payWave payments. The payWave system uses a special computer chip embedded in the card to communicate payment information between the card and the reader. Among the retail locations that use the payWave system are gas stations and other facilities that dispense fuel for vehicles.

13. Visa has infringed and continues to infringe the '819 patent by its manufacture, use, sale and/or offer for sale of Visa's payWave products and services. Visa also contributes to and induces others to manufacture, use, sell, import, and/or offer for sale products and services that infringe the '819 Patent. Visa is liable for its infringement of the '819 patent pursuant to 35 U.S.C. § 271.

14. Visa has violated and continues to violate 35 U.S.C. § 271 (a), (b), (c), and (f). Specifically, Visa has continued to make, use, sell, and offer to sell products that infringe the claims of the '819 Patent. Visa also continues to contribute to and induce infringement by others, without a license under the Patent.

15. Visa's acts of infringement are irreparably harming and causing damage to Rydex.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

A. Plaintiff seeks a declaration that the Defendants have infringed and continue to infringe United States Patent No. 5,204,819.

B. Plaintiff seeks an award of damages arising out of Defendants' infringement of United States Patent No. 5,204,819, together with prejudgment and post-judgment interest, in an amount according to proof.

C. Plaintiff seeks an award of their attorney fees, costs, and expenses pursuant to 35 U.S.C. § 285 or as otherwise permitted by law.

D. Plaintiff seeks an order permanently enjoining Defendants and their respective officers, agents, employees and those acting in privity with them, from further infringement of United States Patent No. 5,204,819.

E. Plaintiff seeks such other and further relief as the Court may deem just and proper.

DATED: January 28, 2010

Respectfully submitted,

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